

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

F I L E D
AUG - 1 2019
CLERK'S OFFICE
DETROIT

WEBASTO THERMO & COMFORT
NORTH AMERICA, INC. and
WEBASTO-EDSCHA CABRIO USA, INC.,

Plaintiffs/Counter-Defendants,

Case No: 16-cv-13456

v.

Paul D. Borman
United States District Judge

BESTOP, INC.,

R. Steven Whalen
United States Magistrate Judge

Defendant/Counter-Plaintiff.

_____ /

ORDER (1) SETTING TRIAL DATES, and
(2) ESTABLISHING TRIAL PROCEDURES

TRIAL DATES AND PROCEDURES

Trial in this action will begin on **Thursday, August 22, 2019 at 8:30 a.m.** with jury selection and will run as long as necessary (up to **4:30 p.m.**) to select a jury. The Court has granted summary judgment to the Plaintiff on infringement of Claim 6 of U.S. Patent No. 9,346,342 ("the '342 Patent). Claim 6 of the '342 Patent was the only claim litigated in earnest in this action that has been pending for three years. (ECF No. 230.) Accordingly, trial will be limited to the issues of validity and damages.¹

¹ The Court will bifurcate the damages/willfulness phase of the trial. *See Robert Bosch, LLC v. Pylon Mfg. Corp.*, 719 F.3d 1305, 1319 (Fed. Cir. 2013) ("[W]e wish to make clear that

Following seating of the jury, trial days will run from 8:30 a.m. to 1:30 p.m. each day with a brief mid-morning break but no break for lunch.

At least one week in advance of the first day of Trial, or on or before **August 15, 2019**, the parties shall submit the following materials to the Court:

- A brief paragraph on what each side claims with regard to the patent in suit.
- A joint set of Preliminary Instructions which shall include a brief description of the patent, an overview of the rules regarding the issues to be tried and a brief general explanation of what the jurors will be called upon to decide;
- A Joint set of Substantive proposed Jury Instructions. Plaintiff shall draft a proposed set and present them to the Defendant in sufficient time to allow the parties to meet and confer in order to present an agreed upon proposed set of substantive instructions to the Court by **August 15, 2019**.
- To the extent that the parties disagree on any proposed jury instruction, the parties shall submit an in depth discussion of the basis for the disagreement, including the legal authority and related analysis on which each side relies.
- A list of witnesses, separately stating who will be called and who may be called, with a brief description of each witnesses' testimony, as well as the proposed time for direct examination of the witness;

district courts, in their discretion, may bifurcate willfulness and damages issues from liability issues in any given case. District courts have the authority to try these issues together or separately just as they have the authority to try all issues together at the liability stage.”) The damages phase will begin, if necessary, after a very short interval following the verdict on liability; the Court intends to assemble the same jury.

- A stipulated General Verdict Form with written questions. *See* Fed. R. Civ. P. 49(b). Plaintiff shall draft a proposed verdict form with written questions and present them to the Defendant in sufficient time to allow the parties to meet and confer in order to present an agreed upon a verdict form to the Court by **August 15, 2019**;
- Three complete sets of Trial Exhibits for the Court, numbered, tabbed, and bound for easy reference during the Trial.

The following general trial practice guidelines also will apply:

- The parties shall provide, on the first day of trial, a single three-ring binder for each juror for the purpose of taking notes. The three-ring binder shall include a copy of the patent in suit along with any stipulation of facts to which the parties agree;
- The initial jury shall consist of ten jurors. The verdict shall be unanimous unless the parties stipulate otherwise. A minimum of six jurors is necessary to render a verdict. Fed. R. Civ. P. 48(b).
- The Court will conduct the jury voir dire. The parties may propose questions for the Court to consider by submitting their requests to chambers in writing on or before **August 8, 2019**.
- Each party shall have three peremptory challenges. Fed. R. Civ. P. 47(b); 28 U.S.C. § 1870.
- Exhibit lists shall be kept daily. Relevant portions of each exhibit shall be highlighted. Listed exhibits are deemed admitted. Unless an exhibit is referenced during the course of the trial, it is not part of the record of the trial.
- Exhibits to be used in opening statements shall be shown to the opposing party by at least **August 15, 2019**.

- Three-hole punched copies of exhibits used at trial may be given to the jurors to place in their notebooks after they have been admitted into evidence.
- As each witness takes the stand, he/she shall be given a folder of the exhibits to be discussed. The Court (three (3) copies) and the opposing party shall be given a like folder including a list of the exhibits included in the folder.
- Each side shall have 15 hours to present their case. This total time shall include direct and cross examination but does not include opening statements or closing arguments. Opening statements shall be limited to thirty (30) minutes.

As set forth in the Court's August 2, 2018 Order (ECF No. 99), the following dates are in effect:

Proposed Final Pretrial Order Due: **August 7, 2019²**

² The parties are reminded of the requirements for the preparation of the Joint Final Pretrial Order set forth in Section IV of the Court's Civil Case Management and Scheduling Order. (ECF No. 99, 8-14 PgID 2408-14.) To the extent that this Order imposes different or additional requirements to those set forth in the Civil Case Management and Scheduling Order, this Order shall control.

The parties are specifically directed to Section IVD regarding the contents of the Joint Final Pretrial Order and more specifically to paragraph 7 – Objections to Exhibits. The parties are ORDERED to meet and confer as to ALL objections to exhibits in advance of preparing the Joint Final Pretrial Order and to diligently and in good faith work to resolve those objections. To the extent that an objection is not resolved, the parties must include in the Joint Final Pretrial Order the objecting party's basis for the objection (including citation to legal authority – not just citation to a Federal Rule of Evidence but providing case citations – and supporting legal analysis) and the offering party's response to the objection (including citation to legal authority – not just citation to a Federal Rule of Evidence but providing case

Final Pretrial Conference:

August 12, 2019 at 2:00 p.m.

IT IS SO ORDERED.



Paul D. Borman
United States District Judge

Dated: August 1, 2019

ATTACHMENT: Trial Schedule

citations – and supporting legal analysis).

**WEBASTO
TRIAL CALENDAR**

Thursday, August 22	8:30 - 4:30	Jury Selection
Friday, August 23	8:30 - 1:30	If Jury Selection incomplete - 4:30
Monday, August 26	8:30 - 1:30	
Tuesday, August 27	8:30 - 1:30	
Wednesday, August 28	8:30 - 1:30	
Thursday, August 29	8:30 - 1:30	
Friday, August 30	8:30 - 1:30	No Jury, Just Attorneys, Jury Instruction Conference
Tuesday, Sept. 3	8:30 - 1:30	
Wednesday, Sept. 4	8:30 - 1:30	
Thursday, Sept. 5	8:30 - 1:30	
Friday, Sept. 6	8:30 - 1:30	
Monday, Sept. 9	8:30 - 1:30	
Tuesday, Sept. 10	8:30 - 1:30	
Wednesday, Sept. 11	8:30 - 1:30	
Thursday, Sept. 12	8:30 - 1:30	
Friday, Sept. 13	8:30 - 1:30	
Final Arguments	8:30 - 4:30	